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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,711	02/06/2002	Sebastien Bigo	Q68261	5626
7590	12/02/2003			
SUGHRUE, MION, ZINN, MACPAAK & SEAS, PLLC 2100 Pennsylvania Avenue, N.W. Washington, DC 20037-3213			EXAMINER	
			WANG, GEORGE Y	
		ART UNIT	PAPER NUMBER	
		2871		

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/066,711	BIGO ET AL.	
	Examiner George Y. Wang	Art Unit 2871	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Office Action Summary

Application No.

10/066.711

Examiner

George Y. Wang

Applicant(s)

BIGO ET AL.

2871

933

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- A timely filed reply, which includes a statement that the application is abandoned, will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1) Responsive to communication(s) filed on 19 August 2003.
2a) This action is **FINAL**. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3 is/are pending in the application.
4a) Of the above claim(s) is/are withdrawn from consideration.

5) Claim(s) 2 is/are allowed.

6) Claim(s) 1 and 3 is/are rejected.

7) Claim(s) is/are objected to.

8) Claim(s) are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 06 February 2002 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) The translation of the foreign language provisional application has been received.
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

4) Interview Summary (PTO-413) Paper No(s). ____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xie (U.S. Patent No. 6,373,604) in view of Wong et al. (U.S. Patent No. 6,208,444, from hereinafter "Wong").

Xie discloses an optical multiplexing/demultiplexing transmission system with a frequency allocation scheme for optical channels via a WDM transmission line with alternating left side and right side filtering for adjacent channels, where the two sets of

channels are orthogonally polarized (abstract; col. 5, lines 55-67). Furthermore this system also has a transmitter function comprising polarized light sources, modulators, and wavelength multiplexers, and a receiver function having a polarization demultiplexer, a wavelength demultiplexer, filters, and electrical receivers (fig. 1).

However, the reference fails to specifically disclose alternating channel spacing of A and B, such that A<B.

Wong discloses a WDM device where alternating channel spacings are such that one is greater than the other (col. 2, line 65 – col. 3, line 16) .

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have specified unequal channel spacing since one would be motivated by the lower cost of interferometric devices by using first stage device devices having good flatness and low cross-talk (col. 3, lines 29-33). Furthermore, the separation of channels of different spacings can be individually received by a receiver that is not wavelength selective (col. 3, lines 33-41), which allows more efficient transmission of optical signals and maximizes enhancing the multiplexing process (col. 3, lines 7-15).

Double Patenting

3. The terminal disclaimer filed on 19 August 2003 disclaiming the terminal portion of any patent granted on this application has been reviewed and is accepted. The terminal disclaimer has been recorded.

Allowable Subject Matter

4. Claim 2 is allowed.

The following is an examiner's statement of reasons for allowance: As the claims were read and interpreted in light of specification, the prior art of record fails to specifically disclose two sets of orthogonal polarized channels that are shifted verses each other by a value of $A/2 + \delta_{\text{filter}}$, +/- 20%.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

5. Applicant's arguments filed 19 August 2003 have been fully considered but they are not persuasive.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. It is clear that the Xie reference discloses "left-side and right-side filtering for adjacent channels" in the abstract ("odd and even") and throughout the disclosure (see above rejection).

Applicant's arguments also do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in

view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Applicant merely alleges that the references do not teach the limitations in the claims and then asserts that "even assuming, arguendo," that it does, Applicant continues to allege that there is no teaching for another limitation.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, there is motivation clearly cited from the Wong reference to warrant such a combination (see above rejection).

Therefore, Examiner holds to the validity of the references and maintains rejection.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Y. Wang whose telephone number is 703-305-7242. The examiner can normally be reached on M-F, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert H. Kim can be reached on 703-305-3492. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

gw
November 19, 2003

G. Wang
T. Chaudhury
Primary Examiner